Agenda Date: 07/20/00
Agenda Item: LSD

# STATE OF NEW JERSEY

***Board of Public Utilities***
***Two Gateway Center***
***Newark, NJ 07102***
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ENERGY

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| IN THE MATTER OF THE VERIFIED PETITION OF JERSEY CENTRAL POWER & LIGHT COMPANY, DOING BUSINESS AS GPU ENERGY, SEEKING APPROVAL OF THE SALE OF THE OYSTER CREEK NUCLEAR GENERATING STATION PURSUANT TO N.J.S.A 48:3-7, A SPECIFIC DETERMINATION ALLOWING THE OYSTER CREEK NUCLEAR GENERATING STATION TO BE AN ELIGIBLE FACILITY PURSUANT TO SECTION 32 OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 AND A WAIVER OF THE ADVERTISING REQUIREMENTS OF N.J.A.C. 14:1-5.6(B) | ) | FINAL DECISION AND ORDER<br><br>DOCKET NO. EM99120917 |

(SERVICE LIST ATTACHED)

BY THE BOARD:

This Final Decision and Order memorializes and provides the reasoning for the action taken by the Board of Public Utilities ("Board") in this matter, by a vote of three Commissioners, at its July 20, 2000 public agenda meeting, which action was summarized in its Summary Order dated July 28, 2000 ("Oyster Creek Summary Order").

## Procedural History

Commencing in 1997 and continuing into 1998, GPU Inc. ("GPU") publicly announced that it was exploring the possible sale or early decommissioning of the Oyster Creek Nuclear Generating Station ("Oyster Creek" or "Facility"). GPU was, at the time, a public utility holding company registered under the Public Utility Holding Company Act ("PUHCA"). Oyster Creek is a 619-megawatt, single unit, boiling water nuclear reactor located in Lacey Township, New Jersey, which was constructed by Jersey Central Power & Light Company ("JCP&L" or "Company"), and placed into commercial service in 1969. The Facility has a full term operating license from the Nuclear Regulatory Commission ("NRC"), which is currently scheduled to expire in 2009. JCP&L was, at the time, a wholly owned electric public utility subsidiary of GPU.[1] While the Facility was wholly owned by JCP&L, GPU Nuclear ("GPUN"), another wholly

[1] At the time of filing its petition in this matter, and continuing through the Board's issuance of the Summary Order, JCP&L was doing business as GPU Energy. As the result of a subsequent acquisition of GPU by FirstEnergy Corp., a registered holding

owned subsidiary of GPU, assumed operational responsibility for Oyster Creek. These early efforts by GPU to sell Oyster Creek were unsuccessful.

On February 9, 1999, the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., was enacted. N.J.S.A. 48:3-59(b) provides, in pertinent part, that:

> [p]rior to the commencement by an electric public utility. . . of any solicitation of bids for the sale of generating assets subject to [stranded cost] recovery. . ., the [B]oard shall establish standards for the conduct of such sale by the utility".

On February 19, 1999, JCP&L announced that it was renewing its efforts to sell Oyster Creek in response to an asserted emergence of an active market for nuclear generating stations and the possibility of potential buyers for the Facility.

By petition dated February 24, 1999, in Docket No. EM99020113, JCP&L requested that the Board establish standards for the conduct of the sale of Oyster Creek. By Order dated April 21, 1999, the Board adopted auction standards applicable to the divestiture process of JCP&L with regard to the Facility ("Auction Standards").

In February 1999, GPU sent early interest letters to approximately 15 domestic and international prospective bidders announcing the planned auction of Oyster Creek and soliciting preliminary indications of interest. Based upon responses to the early interest letters, JCP&L issued an information memorandum on March 29, 1999 to six prospective bidders who had executed a confidentiality agreement with the Company. The information memorandum and its companion five technical volumes provided extensive information on plant design, operations and regulatory compliance, and the PJM Interconnection, LLC ("PJM") wholesale energy market. The prospective bidders were offered an opportunity to perform detailed due diligence from April 19, 1999 through July 9, 1999. On May 7, 1999, JCP&L issued an offering memorandum that included the Board-approved Auction Standards and a detailed term sheet outlining the principal terms and conditions of the Purchase and Sale Agreement ("PSA") and other ancillary agreements under which the successful buyer would purchase Oyster Creek. On June 29, 1999, qualifying bid instructions were issued to the prospective bidders. On July 12, 1999, the Company received three bids. On July 23, 1999, after evaluating the bids, JCP&L selected AmerGen Energy Company, LLC ("AmerGen") as the preferred bidder for negotiations, issued protocols for, and commenced, final due diligence. JCP&L asserts that it selected AmerGen because AmerGen's offer provided the Company with the most favorable terms and conditions for the sale of the Facility. On October 15, 1999, JCP&L and GPUN entered into the PSA and related agreements with AmerGen providing for the sale of Oyster Creek to AmerGen for approximately $10 million, subject to certain adjustments, and subject to Board approval.

On December 13, 1999, JCP&L filed the instant petition with the Board seeking: (a) approval of the sale of Oyster Creek to AmerGen pursuant to N.J.S.A. 48:3-7; (b) a specific determination by the Board allowing Oyster Creek to be an "eligible facility" pursuant to Section 32 of PUHCA; and (c) a waiver of the advertising requirement set forth in N.J.A.C. 14:1-5.6(b). Appendix 3 to the petition provided a summary of the actions assertedly taken by the Company to comply with the Auction Standards. The Company stated that Appendix 2 to the petition would be updated to include a market power analysis that, at the time of filing of the petition, was not yet available

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company headquartered in Akron, Ohio, JCP&L resumed use of its incorporated name. Therefore, references to "GPU Energy" in the Summary Order will be replaced by "JCP&L" in this Final Order.

but would be filed as soon as it became available. The market power analysis is required to satisfy Auction Standard No. 2.

In its petition, JCP&L asserts that, taking into account the Company's recovery of its funding obligations for the nuclear decommissioning trusts and the next scheduled refueling outage, the sale of Oyster Creek to AmerGen is estimated to result in savings to the Company's customers of approximately $169 million through 2009, or approximately $109 million on a net present value basis, as compared to the amounts that would be collected from customers pursuant to the rate structure already approved by the Board in its May 24, 1999 Summary Order in JCP&L's rate unbundling, stranded costs and restructuring proceeding ("Restructuring Summary Order").[2]

AmerGen is a limited liability company formed to acquire and operate nuclear power plants in the United States, and is organized under Delaware law pursuant to a limited liability agreement among PECO Energy Company, a Pennsylvania corporation, British Energy plc, a Scottish corporation, and British Energy Inc., a Delaware corporation that is a wholly owned subsidiary of British Energy plc. Although British Energy plc is a party to the limited liability agreement, only PECO Energy Company and British Energy Inc. are members of AmerGen, with each member holding a 50% interest in AmerGen.

On February 16, 2000, the Board adopted a procedural schedule in order to allow parties the opportunity to review and provide input to the Board regarding the proposed sale of Oyster Creek to AmerGen. The parties to the proceeding included JCP&L, Board Staff and the Division of the Ratepayer Advocate ("Advocate"). The procedural schedule included an opportunity for parties to propound discovery, participate in a public/legislative-type hearing, and submit post-hearing comments and reply comments to the Board.

On March 28, 2000, a public/legislative-type hearing was held before Commissioner Frederick F. Butler regarding the proposed sale of the Facility to AmerGen. Both JCP&L and the Advocate participated in the hearing. Although not parties to the proceeding, representatives of the International Brotherhood of Electrical Workers, Local 1289 and System Council U-3 of the IBEW (collectively, "IBEW" or "Union") also participated in the hearing.

By April 11, 2000, the Board received initial written comments from the Company and the Advocate. Both parties filed reply comments with the Board by April 18, 2000. Board Staff did not file any comments.

By letter dated April 17, 2000, the IBEW submitted comments in this matter. The Union asserted that, although JCP&L indicated at the above hearing that AmerGen would assume the collective bargaining agreement between JCP&L and GPUN and the IBEW for its remaining term, the Company changed its position in its written comments. The Union also requested that the Board require JCP&L to provide 24 months of healthcare coverage to terminated employees, asserting that this requirement exists in N.J.S.A. 48:3-51. These concerns notwithstanding, the IBEW stated its continued support for the sale of Oyster Creek as being in the best interest of its members and the Company's customers.

By letter dated June 14, 2000, JCP&L submitted copies of correspondence between AmerGen and the IBEW dated June 7, 2000, wherein both AmerGen and the IBEW agreed that AmerGen

[2] Docket Nos. EO97070458, EO97070459, and EO97070460 (Summary Order dated May 24, 1999; Final Decision and Order dated March 7, 2001).

would assume the collective bargaining agreement for its full term and would provide 24 months of healthcare coverage to Union employees who may be terminated within two years of the closing of the sale of Oyster Creek. The Company also submitted a copy of a letter from the IBEW to the then President of the Board, stating the IBEW's mutual agreement with AmerGen as well as the Union's full support for the sale of Oyster Creek to AmerGen.

Terms of the Proposed Sale

As part of the PSA, JCP&L agreed to convey to AmerGen all of its right, title and interest in and to all assets constituting, or used in and necessary for the operation of, the Facility, including, among other things, the nuclear reactor, the nuclear fuel, the real property upon which Oyster Creek is sited, all inventories, machinery, equipment, vehicles, fixtures and furniture, transferable permits, all books, records and operating manuals, agreements relating to the ownership, operation and maintenance of Oyster Creek and transferable warranties and guarantees. The PSA also included customary covenants, representations and warranties regarding attendant liabilities, title and insurance, among other things. The PSA also provided for indemnification of AmerGen by JCP&L, up to a specified limit, for, among other things, breaches of such representations and warranties by the Company.

The PSA provided that JCP&L would fund the nuclear decommissioning trusts for Oyster Creek up to a maximum of $430 million[3]. As of the date of the closing, all liabilities and obligations for the decommissioning of the Facility would be assumed by AmerGen, with the Company having no further liabilities or obligations with respect to the decommissioning of Oyster Creek thereafter.

The PSA also provided that JCP&L would fund the outage costs for the upcoming "18R" refueling outage, scheduled to begin in the fall of 2000, including additional nuclear fuel costs, which were expected to be incurred in connection with the refueling, subject to an outage cost cap for JCP&L of approximately $89 million. AmerGen would reimburse the Company for the outage costs up to the outage cost cap in nine equal annual installments, without interest, commencing one year after the closing date.

The PSA required that AmerGen assume the current collective bargaining agreement covering Oyster Creek bargaining unit employees. AmerGen would offer employment to the bulk of the approximately 700 Union and non-Union employees located at Oyster Creek involved in the operation and maintenance of the Facility. In addition, AmerGen may offer employment to Company employees located in JCP&L's Parsippany, New Jersey, headquarters who provide support to Oyster Creek, all of whom are non-Union employees. JCP&L would remain responsible for all severance payments to employees not hired by AmerGen, or whom AmerGen terminated for any reason other than for cause or disability within 24 months following the closing date. The PSA required AmerGen to adopt pension and other employee benefit plans for retained employees that provide benefits that are substantially similar to those provided by the Company's plans. JCP&L would remain responsible for any enhanced retirement benefits payable to these employees, under existing retirement protection programs. By letter dated June 14, 2000, the Company amended its petition to provide documentation relating to certain enhancements to the agreement between AmerGen and the IBEW.

[3] As of September 30, 1999, the Oyster Creek nuclear decommissioning trusts had a value of $297.8 million.

The PSA also provided that AmerGen would assume all on-site environmental liabilities to the extent permitted by applicable laws, except that JCP&L would retain responsibility to remediate certain known environmental conditions at the Oyster Creek site and would be responsible for unknown environmental conditions up to a specified limit for a specified period of time following closing.

As part of the sale, JCP&L and AmerGen also entered into a transition power purchase agreement ("PPA") simultaneously with the execution of the PSA. The PPA provided that, from the closing through March 31, 2003, JCP&L would purchase from AmerGen the total net electric output of Oyster Creek, as well as unforced capacity, as defined by the PJM Reliability Assurance Agreement ("RAA"), at a fixed price of $33.66 per megawatt-hour ('mWh"), with seasonal adjustments for on-peak, off-peak and shoulder periods. The PPA also provided for certain pricing adjustments if the closing occurred prior to, or later than, March 31, 2000.

JCP&L and AmerGen also agreed to provide various services to each other, both before and after closing, pursuant to a Reciprocal Services Agreement ("RSA"). Under the RSA, these services would be performed on a "cost plus" basis.

In addition to requesting Board approval of the sale of Oyster Creek pursuant to the terms of the aforementioned agreements, JCP&L requested that the Board determine that AmerGen be found to be an "exempt wholesale generator" by finding the Facility to be an "eligible facility" under PUHCA. The Company also requested that the Board waive the advertising requirement of N.J.A.C. 14:1-5.6 (b).

## Positions of the Parties

### Company Initial Comments

The Company, in its initial comments, argues that sale of Oyster Creek to AmerGen is both reasonable and prudent, and that the sale is consistent with the Company's decision to exit the generation business. The Company asserts that it conducted the sale process in accordance with the Board's Auction Standards for the Facility. The Company further argues that the purchase terms are fair and reasonable. The Company points out that, in exchange for the purchase price, JCP&L will convey to AmerGen all of the Company's right, title and interest in and to all of the assets constituting, or used in and necessary for the operation of, Oyster Creek. The Company asserts that the PSA includes customary covenants, representations and warranties regarding attendant liabilities, title and insurance, among other things.

Pursuant to the PSA, JCP&L agreed to fund the costs associated with the 18R refueling outage, subject to an outage cost cap of approximately $89 million, with AmerGen reimbursing the Company in nine equal installments, without interest, commencing one year after the closing date. The Company asserts that the associated carrying costs are a cost of the transaction and should be charged to customers who will reap the economic benefits of the sale.

The Company also agreed with AmerGen to a reasonable transition plan for the incumbent Oyster Creek workforce. Further, JCP&L agreed to fund the Oyster Creek decommissioning trusts up to a maximum of $430 million, which would require a closing contribution by the Company of approximately $122.5 million. The Company asserts that neither it nor its customers will have any further or remaining liabilities or obligations with respect to the decommissioning of the Facility thereafter, and that the Company will be relieved of the

regulatory and other risks associated with decommissioning and nuclear fuel disposal. Further, the Company asserts that customer savings will result from the fact that Oyster Creek will not be shut down in 2000, but will likely continue to operate at least until 2009, thereby eliminating the need to expend decommissioning funds in the near future and allowing the funds to accrue additional investment earnings. The Company also agrees with arguments made by the Division of the Ratepayer Advocate ("Advocate") at the public/legislative-type hearing that, to the extent appropriate, the Societal Benefits Charge ("SBC") should be adjusted to reflect any customer savings, and that any savings should be credited to the Company's deferred balance account authorized by the Restructuring Summary Order.

JCP&L disagrees with the Advocate's comments at the public/legislative-type hearing that certain regulatory assets included in the sale should not be allowed for recovery, asserting that these types of assets had previously been subsumed in the Company's distribution rate without specific adjustment. The Company asserts that it is appropriate to remove all production-related regulatory assets associated with the sale of Oyster Creek from its books in light of the Company's exit from the generation business.

JCP&L asserts that the PSA and related agreements provide adequate assurance of system reliability. The Company contends that AmerGen has more than 20 years of experience in operating nuclear generating facilities. Simultaneously with the execution of the PSA, the Company entered into the PPA with AmerGen, which provided that, from the closing through March 31, 2003, the Company would purchase from AmerGen the total net electric output of Oyster Creek, as well as all unforced capacity, as defined by the PJM RAA, at an average fixed price of $33.66/mWh. The Company also entered into the Reciprocal Services Agreement with AmerGen to provide various services to each other, both before and after the closing. Finally, JCP&L entered into the Interconnection Agreement with AmerGen in order to enable Oyster Creek to access the transmission grid. The Company thus asserts that the sale of Oyster Creek will not adversely affect either the availability or reliability of the electric supply to the Company's customers or any other electricity customer within PJM.

The Company asserts that actual stranded cost resulting from the sale of Oyster Creek have yet to be calculated and can only be definitively quantified upon the calculation of the net proceeds of the sale in a subsequent true-up proceeding in accordance with the methodology already approved by the Board in its Restructuring Summary Order.

Finally, the Company asserts that the sale of Oyster Creek meets the standards of N.J.S.A. 48:3-59(c), since the sale of the Facility: (1) reflects full market value; (2) is in the best interest of customers; (3) does not jeopardize reliability; (4) does not result in undue market control by AmerGen; (5) reasonably mitigates the impact on employees; and (6) fully addresses the other employee-related standards of N.J.S.A. 48:3-59(c).

Advocate Initial Comments

In its initial comments, the Advocate stresses the need for, and urges the Board to conduct evidentiary hearings for the purpose of developing a comprehensive evidentiary record upon which to base its ruling in this matter, since the result of the sale would ultimately impact JCP&L's total stranded costs and, thus, the rates paid by the Company's customers.

The Advocate asserts that JCP&L has not proved that it has fully complied with the Board's Auction Standards with regard to the sale price, arguing that JCP&L did not establish that the sale is in the public interest or that the sale price reflects Oyster Creek's full market value. The

Advocate argues that recent competitive bidding and sales on nuclear facilities call into question the reasonableness of the sales price for the Facility. The Advocate asserts that the Company's calculation of net customer benefits under its sale does not completely reflect the actual costs and benefits of its sale in comparison to a shutdown scenario. The Advocate argues that, while JCP&L contends that the sale of Oyster Creek will result in savings to its customers of approximately $169 million through 2009, as compared to the early shutdown scenario, the Company's calculation of total savings attributable to the sale does not properly reflect the actual costs and savings associated with either alternative. The Advocate argues that the transfer of decommissioning liabilities to AmerGen represents a significant part of the asserted savings that JCP&L attributes to the sale of Oyster Creek but that, unless the Company adjusts its SBC benefits charge to reflect the transfer of decommissioning responsibility, the resultant benefit will not flow to the Company's customers.

The Advocate asserts that JCP&L's retention of certain environmental liabilities at the Oyster Creek site does not meet Auction Standard No. 7, which requires that all on-site environmental liabilities be assumed by the buyer, unless otherwise required by applicable local, State and federal laws, or absent a showing by the Company that retaining the liability provides a substantial risk-adjusted benefit to the Company's customers. The Advocate asserts that JCP&L has not made the requisite showing, and that the retention of known and unknown non-radiological liabilities exposes JCP&L's customers to a financial risk of an unknown level. The Advocate argues that the customers' liability would be limited only by the expected net benefits of the sale, or $169 million, with said liabilities potentially eliminating any net benefits resulting from the sale.

The Advocate also objects to JCP&L's proposal to fund the 18R refueling outage by providing a no-interest nine-year loan of up to $88.6 million to AmerGen and to seek securitization of the loan amount. The Advocate asserts that this proposal would require customers to pay interest on the said securitized amount for up to 15 years. The Advocate also opines that the outage cost cap appears to be above the average cost of previous outages.

The Advocate questions the Company's employee curtailment savings of $42 million and other employee benefits proposed for amortization. The Advocate also questions certain regulatory assets, specifically "design basis documentation" and probabilistic risk assessment" costs having a value of $7.7 million. The Advocate argues that these regulatory assets should be excluded from the sale.

The Advocate opines that the potential value of the PPA could be eroded if the Facility is not operated at a sufficient availability factor, as JCP&L would then have to purchase capacity and energy elsewhere at presumably higher prices. The Advocate suggests that some provision to at least partially insulate the Company's customers from the consequences of poor availability should have been included in the PPA.

Lastly, the Advocate asserts that, if the Board approves the sale of Oyster Creek, JCP&L's customers should be credited with any tax benefits associated with the Facility, pending the outcome of tax rulings by the Internal Revenue Service ("IRS"). The Advocate asserts that, through the years, various tax benefits have accrued in connection with the operation of Oyster Creek, with the treatment of investment tax credits ("ITC"), excess deferred income taxes ("EDIT") and tax liabilities associated with the related decommissioning trust fund at issue. The Advocate submits that any resulting tax benefits should flow through to the benefit of JCP&L's customers. The Advocate recommends that the Board order the Company to seek a ruling from the IRS on these tax issues.

Company Reply Comments

JCP&L asserts that the Advocate raised certain peripheral issues in its initial comments with which the Company concurs, and which were never really in dispute. The Company asserts that the fundamental point in this matter is that the failure to sell Oyster Creek will likely leave the Company with no economic alternative but to shut the Facility down, resulting in an adverse impact on the associated workforce, the local economy, electric system support and the Company's customers. The Company asserts that the evidence in this proceeding demonstrates that the sale of Oyster Creek will significantly reduce the financial burden on the Company's customers, as compared to the alternate rate impact of a shutdown of the Facility, which rates are reflected in the Summary Order.

JCP&L asserts that, consistent with several recent Board rulings under similar circumstances, there is no need for evidentiary hearings, as there are no material factual issues in dispute. The Company asserts that the instant petition does not request recovery of stranded costs associated with the sale of Oyster Creek, but only approval to sell the Facility, for the benefit of customers.

The Company maintains that it adhered to the Auction Standards and sold Oyster Creek through an open competitive bidding process, and that there is no better evidence of market value than the results of said process. The Company points to the Board's Order adopting the Auction Standards, wherein the Board acknowledged the uniqueness of Oyster Creek with regard to the Facility's age, type and single-unit status as resulting in a more limited market. JCP&L argues that the that recent competitive bidding and sales on other nuclear facilities referred to by the Advocate included the same prospective bidders as for Oyster Creek, but that those particular bidders chose not bid on Oyster Creek's value as an operational plant.

JCP&L asserts that, contrary to the Advocate's arguments concerning the actual savings associated with the sale of Oyster Creek, the precise quantification of the savings is not necessary for the Board to make its decision in this matter. The Company asserts that there will be substantial savings, along with other benefits.

The Company refutes the Advocate's assertions regarding the potential value of the PPA, arguing that the agreed-upon price of capacity and energy is based on assumptions that are typical for a nuclear generation facility, and that the PPA provides an incentive to AmerGen to maintain full output at peak times and to provide energy to the Company from the Facility at precisely those times when it is likely that replacement power would be the most expensive. JCP&L further asserts that the PPA has considerable value for the Company's customers by reducing the risk of volatility in the energy market. The Company argues that the value of the sale of Oyster Creek is not dependent upon full realization of the value of the PPA.

JCP&L lastly asserts that there are no fundamental tax matters at issue, as the receipt of favorable tax rulings with respect to the tax liabilities associated with the decommissioning trust funds for the Oyster Creek sale is already a condition to closing. The Company further asserts that it has already agreed to seek an IRS tax ruling concerning ITC and EDIT matters associated with Oyster Creek.

Advocate Reply Comments

The Advocate asserts that JCP&L has not refuted the legal requirement for the Board to hold evidentiary hearings in this matter, maintaining that, contrary to the Company's arguments, this matter is a contested case. Largely relying on its initial comments, the Advocate maintains that the quasi-judicial nature of this proceeding calls for evidentiary hearings to develop a complete record.

The Advocate asserts that JCP&L offers nothing in its initial comments that proves that the sale represents the full value of the Facility as required by N.J.S.A. 48:3-59(c) or that the Company complied with the Board's Auction Standards. The Advocate cites recent events such as high prices in the PJM market, the resale of other former generation assets of JCP&L at a higher price and the re-bidding of other nuclear generation assets of a New York utility at a price higher than the originally sale price.

The Advocate maintains that JCP&L failed to fully address deficiencies identified by the Advocate concerning asserted benefits associated with decommissioning contributions, the retention of certain environmental liabilities, refueling outage costs and the treatment of certain regulatory assets.

Discussion and Findings

At the outset, the Board rejects the contention of the Advocate that an evidentiary hearing should have been held in this matter to develop a full record. Based on its review of the requirements of N.J.S.A. 48:3-59(c), the procedures which have been followed and the record which has been developed in this matter, the Board is satisfied that an extensive record has been developed and that all parties to this proceeding have had a full and fair opportunity through discovery, a public/legislative-type hearing, including the opportunity to present testimony, and comments and reply comments to the Board, to review and explore the underlying facts regarding the Company's proposal, and to present their factual, policy and legal concerns to the Board regarding the proposed sale, as well as other related issues of concern. See, I/M/O Public Service Electric and Gas Company's Rate Unbundling, Stranded Costs, and Restructuring Filing, 330 N.J. Super. 65, 117-120 (App. Div. 2000), affirmed, 167 N.J. 337 (2001).

As a preliminary matter, the Board has considered what review criteria should be used in assessing the appropriateness and reasonableness of the sale of Oyster Creek. N.J.S.A 48:3-59(b) requires that, prior to the commencement by an electric public utility of the solicitation of bids for the sale of generation assets subject to recovery pursuant to N.J.S.A. 48:3-61 and N.J.S.A. 48:3-62, the Board shall establish standards for the conduct of such a sale by the utility. N.J.S.A. 48:3-59(b) indicates that such standards shall include provisions for the Board to monitor the progress of the bid process to ensure that the process is conducted by parties acting in their best interest and in a manner designed to ensure a fair market value determination and does not unreasonably preclude participation by prospective purchasers. N.J.S.A. 48:3-59(b) further requires that the standards adopted by the Board shall include provisions that the purchaser shall: (1) recognize the existing employees bargaining unit, and shall continue to honor and abide by an existing collective bargaining agreement for the duration of the agreement, and that the purchaser shall be required to bargain in good faith with the existing collective bargaining unit when the existing collective bargaining agreement has expired; (2) hire its initial employee complement from among qualified employees of the electric

public utility employed at the generation facility at the time of the divestiture; and (3) continue such terms and conditions of employment of employees as are in existence at the generation facility at the time of the divestiture.

N.J.S.A. 48:3-59(c), requires that, prior to completing the sale of generating assets subject to recovery pursuant to N.J.S.A. 48:3-61 and N.J.S.A. 48:3-62, an electric public utility shall file for, and obtain approval of, the sale by the Board. The Board shall approve such filing subject to the provisions of N.J.S.A. 48:3-59(d) if it finds that: (1) the sale reflects the full market value of the assets; (2) the sale is otherwise in the best interest of the electric public utility's customers; (3) the sale will not jeopardize the reliability of the electric power system; (4) the sale will not result in undue market control by the prospective buyer; (5) the impacts of the sale on the utility's employees have been reasonably mitigated; (6) the sale is consistent with standards established by the Board in N.J.S.A. 48:3-59(b); (7) the sale includes provisions that the purchaser shall recognize the existing employee bargaining unit and shall honor and abide by any existing collective bargaining agreement for the duration of the agreement; (8) the sale of the generation assets includes a provision that the purchaser shall hire its initial employee complement from among the employees who are employed at the generation facility at the time of the sale; and (9) the sale of the generation assets includes a provision that the purchaser shall continue such terms and conditions of employment of employees as are in existence at the generation facility at the time of the sale.

The Board's review of the record for compliance with the Board's April 21, 1999 Auction Standards with regard to this Facility indicates the following observations as set forth below.

> Auction Standard No. 1: The auction process must be designed to foster competition among bidders, ensure maximum sales price, thereby minimizing stranded costs, and encourage bidder flexibility. The process must be designed in a way to maintain necessary confidentiality in order to restrict the possibility of gaming and to maintain an optimal situation for the development of a comprehensive energy supply market for competition. The process must also consider the costs incurred. The auction should be structured to maximize the sale price while reasonably managing costs, administrative and otherwise.

The Company asserts that, commencing in 1997 and continuing into 1998, GPU publicly announced that it was exploring the possible sale or early decommissioning of Oyster Creek and, through Goldman Sachs & Co. ("Goldman Sachs") and its own efforts, contacted a number of domestic and international utility companies qualified to purchase and operate a nuclear generation facility to determine whether they might be interested in purchasing Oyster Creek. Following its agreement to sell its 25% interest in the Three Mile Island Unit 1 nuclear generating facility ("TMI-1") to AmerGen, GPU renewed its efforts to sell Oyster Creek by commencing a formal auction process for the sale of the Facility. In February 1999, GPU sent an early interest letter to approximately 15 potential bidders formally announcing the planned auction of Oyster Creek and soliciting preliminary indications of interest. Based upon the responses, on March 29, 1999, JCP&L issued an information memorandum to six potential bidders who had executed a confidentiality agreement with the Company. The information memorandum and its companion technical volumes provided extensive information on plant design, operations and regulatory compliance, as well as the PJM wholesale energy market. Thereafter, from April 19, 1999 through July 9, 1999, in order to allow potential bidders maximum preparation opportunity for the submission of qualifying bids, the potential bidders were invited to participate in detailed due diligence, which included access to the Oyster Creek document room, site visits and meetings with Facility and Company management. GPU also

invited potential bidders to begin submitting written questions and requests for information. The Company retained a qualified consultant to assist in the management of the due diligence process and preparation of the offering memorandum.

> Auction Standard No. 2: Bidder qualifications should be reasonable and not unduly restrictive. Qualifications may include such criteria as financial capability; regulatory or other legal requirements, experience in ownership, operation and decommissioning of nuclear generating facilities; labor and industrial relations experience; and relevant safety, environmental and community involvement track records. Prospective bidders must be required to indicate the intended use of Oyster Creek.

JCP&L asserts that it endeavored to build a pool of as many bidders as possible, while acknowledging the unique status of Oyster Creek, particularly with regard to the age and type of the Facility and the fact that the Facility is a single unit being offered for sale, all of which may result in a more limited market than exists for non-nuclear units. The Company's initial list of approximately 15 potential bidders for Oyster Creek included those companies, both domestic and international, which GPU and its consultant identified as participants in other nuclear generation facility sales or auctions, and owners, operators and builders of nuclear generation facilities who would be most likely to have an interest in acquiring Oyster Creek. In order to participate in the bid process, potential bidders were required to execute a confidentiality agreement. As indicated above, based upon the responses to the early interest letter inquiries, the Company issued an information memorandum to six potential bidders who had executed a confidentiality agreement with the Company.

> Auction Standard No. 3: Any "short list" or final bidding group must strive to include enough participants to promote competition, to the extent practicable recognizing that there may be a limited market for nuclear power plants approaching decommissioning.

On May 7, 1999, the Company asserts that it provided an offering memorandum to each of the six potential bidders participating in the detailed due diligence, and issued qualifying bid instructions to these bidders as well. Thereafter, the Company received three qualifying bids from the final bidding group.

> Auction Standard No. 4: [JCP&L] must ensure that access to all relevant information is provided to all prospective bidders (this may include but will not necessarily be limited to plant and site data; transmission and fuel supply infrastructure; interim buyback requirements, if any; State and federal regulatory requirements; relevant market information, environmental, decommissioning, and other liabilities; labor responsibilities; industry and market analysis). Bidders should be provided with appropriate access to relevant documentation and key personnel to perform necessary due diligence investigations. The bidders should also be informed about regulatory and commercial terms of sale in order to make informed decisions and correctly analyze the value of the assets being offered.

JCP&L asserts that the offering memorandum provided to the six potential bidders included the Auction Standards and a term sheet outlining the principal terms and conditions of the PSA and other material ancillary agreements under which the successful buyer would purchase Oyster Creek from the Company. Through the process described above, including the provision of the term sheet detailing the transaction terms, the Company informed each of the potential bidders

of the regulatory and commercial terms of sale. Throughout the auction process, JCP&L responded to questions from potential bidders. In addition, the Company permitted site visits and meetings with Company management for all potential bidders, during which the potential bidders could question JCP&L and GPUN personnel regarding any aspect of the auction or the assets being offered for sale.

> Auction Standard No. 5: [JCP&L], upon completion of the auction, and as part of its request for approval, will be required to submit a market power analysis for regulatory review. [JCP&L] must demonstrate that the sale of the Oyster Creek facility will not create or enhance market power in the relevant market, and should take into account the effect of any identified load pockets. The Board will give particular attention to any buyer, which currently owns or controls electric generation assets in the State of New Jersey.

By letter dated December 23, 1999, JCP&L filed its market power analysis associated with AmerGen's acquisition of Oyster Creek as Appendix 2 to the petition. JCP&L asserts that PHB Hagler Bailly, Inc., the firm that conducted the market power analysis, applied the merger guidelines of the FERC in an analysis that treats the acquisition of Oyster Creek by AmerGen as if it were an acquisition by PECO.

> Auction Standard No. 6: [JCP&L] must demonstrate that it has adequately provided for system reliability and the provision of safe, adequate and reliable service post-divestiture. [JCP&L] must demonstrate that there will be an entity or structure in place for it to meet the reasonably anticipated load requirements (including basic generating service) through retail phase-in, and provide local area support, if necessary. The buyer should commit to adhere to requirements of the local control area independent system operator entity and all applicable operational and reliability standards.

JCP&L and AmerGen entered into a PPA simultaneously with the execution of the PSA. JCP&L asserts that, from the closing through March 31, 2003, the Company will purchase from AmerGen the total net electric output of Oyster Creek, as well as all unforced capacity, as defined by the PJM RAA, at a fixed price of $33.66/mWh, with seasonal adjustments for on-peak and shoulder periods. The Company contends that the PPA will assist JCP&L in continuing to meet its PJM capacity obligations and in providing associated energy to serve its remaining basic generation service customer load. Further, AmerGen and the Company have entered into an Interconnection Agreement in order to assure that AmerGen may have access to the grid in order to sell the power generated by the Facility.

> Auction Standard No. 7: Absent a showing by [JCP&L] that retention of such liabilities provides a substantial risk-adjusted benefit to ratepayers, all on-site environmental and decommissioning liabilities associated with Oyster Creek shall be assumed by the purchaser unless otherwise required by applicable local, State and federal laws. The buyer shall comply with all safety and environmental standards as embodied in existing State and federal statutes and regulations and associated permits, and as subsequently modified through legislative or regulatory actions.

AmerGen will assume all on-site environmental liabilities to the extent permitted by applicable laws except that the Company will retain responsibility to remediate certain known environmental conditions at the Oyster Creek site and for unknown environmental conditions up

to a specified limit for a specified period of time following closing. JCP&L asserts that this agreement represents a risk-adjusted benefit to the Company and its customers. The Company further asserts that it performed and provided to potential bidders environmental studies that revealed certain existing environmental conditions, only some of which were in the process of being remediated. JCP&L asserts that, by virtue of this agreement, the Company capped its financial liability for such environmental conditions and confined such liability to a limited period of time. In addition, as of the date of the closing, AmerGen will assume all liabilities and obligations for the decommissioning of Oyster Creek. The Company asserts that it and its customers will have no further liabilities or obligations with respect to the radiological decommissioning of the Facility thereafter.

> Auction Standard No. 8: All bidders on the short list, or in the final bidding group, shall be required to submit to [JCP&L], on a confidential basis, a disclosure of all formal notices of violation of local, State and federal environmental permits applicable to the ownership or operation of electric generating facilities for the past five year period. The safety and environmental performance record for the proposed buyer shall be submitted and made public as part of the petition by [JCP&L] for approval of the sale.

JCP&L asserts that AmerGen represented to the Company that it had not received any formal notices of violation of environmental permits by any local, state or federal environmental authorities applicable to the ownership or operation of electric generation facilities for the past five years. Information as to environmental matters with respect to PECO and British Energy are attached to the Company's petition as Attachments 1 and 2 to Appendix 3 of the petition.

> Auction Standard No. 9 The divestiture petition must include a reasonable transition plan, plus a system of reporting such plans, for the incumbent generation workforce, including, but not limited to, assurances that existing pension and other post-retirement benefits and entitlements accrued through the date of sale are protected, and also must include requirements that the buyer assume any existing collective bargaining agreements covering Union employees associated with Oyster Creek. In addition, [JCP&L] is expected to assist employees (both Union and non-Union) in obtaining positions with the buyer.

The PSA provides that AmerGen must assume the current collective bargaining agreement covering Oyster Creek bargaining unit employees, and may offer employment to the approximately 700 Union and non-Union employees located at Oyster Creek and involved in the operation and maintenance of the Facility. AmerGen must also fill all Union positions by order of seniority. In addition, AmerGen may offer employment to any of the Parsippany, New Jersey-based employees who provide support to Oyster Creek, all of whom are non-Union employees. JCP&L will remain responsible for up to $30 million of severance payments to employees not hired by AmerGen, or whom AmerGen terminates for any reason other than for cause or disability within 24 months following the closing date. AmerGen is required to adopt pension and other employee benefit plans for retained employees that provide substantially similar benefits to the Sellers' current plans. JCP&L will remain responsible for any enhanced retirement benefits payable to these employees, under the existing retirement protection programs. JCP&L and GPUN have entered into an agreement with the Union, in which the Union acknowledges its support of the sale of Oyster Creek.

> Auction Standard No. 10: Upon completion of the auction process, and with its petition for approval of the sale, [JCP&L] shall be required to submit a complete and accurate summary of the auction proceedings and outcome. [JCP&L] must be prepared to provide to the Board in writing the rationale behind the exclusion of any prospective bidder at each stage of the a[u]ction process.

The Company summarized its compliance with the Auction Standards in Appendix 3 to its petition, in its testimony at the public/legislative-type hearing and in its written comments. Taken together with the Company's responses to data requests propounded by Board Staff and the Advocate, the Company's submission appears to constitute a complete and accurate summary of the auction and sale proceeding.

The above discussion notwithstanding, the Advocate asserts that JCP&L did not establish that the sale price reflects Oyster Creek's full market value, as required by Auction Standard No. 1 and that the Company's calculation of net customer benefits of $169 million does not completely reflect the actual costs and benefits of its sale in comparison to a shutdown scenario. The Board has carefully reviewed the Advocate's arguments, but finds that they lack merit. The Board is of the opinion that, pursuant to the Auction Standards, JCP&L's actions resulted in the Company obtaining the best sale price at that time. The Board is also of the opinion that the sale price of Oyster Creek must be measured against the other option available at the time. The Board notes that, pursuant to the Restructuring Summary Order, JCP&L was granted approval to recover additional revenues from its customers, which the Company calculates to be $169 million, if the sale did not occur and the Company retired the Facility prior to the expiration of its operating license in 2009, as planned. The Board is of the opinion that the Advocate's arguments regarding the potential hypothetical market value of the Facility do not reflect the economic reality at the time, nor does it take into account the unfavorable results for customers which would have resulted had the sale not occurred. The Board therefore rejects the arguments on this issue and FINDS the sale price to be reasonable in light of the unique circumstances of this case

The Advocate argues that the transfer of decommissioning liabilities to AmerGen represents a significant part of the asserted savings that JCP&L attributes to the sale of Oyster Creek but that, unless the Company adjusts its SBC benefits charge to reflect the transfer of decommissioning responsibility, the resultant benefit will not flow to the Company's customers. In JCP&L's written comments, the Company stated its agreement with the Advocate regarding this issue. The Board also agrees with the Advocate and the Company that the SBC should be adjusted to reflect any savings associated with a sale of the Facility as opposed to a shutdown. Accordingly, the Board HEREBY DIRECTS JCP&L to adjust its SBC upon closing to reflect any customer savings, and to credit any savings to the Company's deferred balance account authorized by the Restructuring Summary Order.

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As to the Advocate's assertion that the Company's retention of certain environmental liabilities at the Oyster Creek site is contrary to Auction Standard No. 7, the Board notes that, while it finds that JCP&L has substantially complied with the Auction Standards, the Company's retention of a certain non-radiological liability does not comport to Auction Standard No. 7. The Company estimates that the liability will not exceed $1.6 million. The Company also asserts that the retention of this liability was necessary to assist in effectuating the sale, thereby providing a risk-adjusted benefit to its customers. The Company has also agreed to retain limited responsibility for unknown environmental conditions for a fixed period of time following closing of the sale. The Board shares the Advocate's concern regarding retention of open-

ended environmental liabilities regarding Oyster Creek. Accordingly, to mitigate the potential uncertainty and adverse impact to customers arising from the retained responsibility for the aforementioned known environmental liability, the Board HEREBY MODIFIES the Company's petition to place a cap on the recovery of said liability at $2 million, thereby eliminating customer exposure to any uncertain risk beyond this level.[4]

The Advocate also objects to JCP&L's proposal to fund the 18R refueling outage by providing a no-interest nine-year loan of up to $88.6 million to AmerGen and to seek securitization of the loan amount that the Advocate asserts will require customers to pay interest on the said securitized amount for up to 15 years. The Company asserts that customers should bear all carrying costs associated with the sale, as they will benefit from the transaction. The Board agrees with the Advocate that customers should not pay any interest on the payment. Accordingly, the Board HEREBY DENIES recovery from JCP&L's customers of any interest associated with the 18R refueling outage payment. The payment is a regulatory asset to be recorded at face value and recovered over a ten-year period with no interest. Likewise, all reimbursed outage costs will be returned to customers with no interest.

The Advocate argues that two regulatory assets, specifically the "design basis documentation" and the "probabilistic risk assessment", having a combined value of $7.7 million, should be excluded from the sale because they have already received regulatory treatment by the Board. The Board agrees with the Advocate, noting that in the Restructuring Summary Order, JCP&L was authorized continued recovery in it's unbundled distribution rates of all regulatory assets previously recognized in the Company's bundled rates. The Board therefore HEREBY DENIES the inclusion of these assets for amortization and recovery from the Company's customers as part of the Oyster Creek costs.

Based on the foregoing, and considering the particular facts and circumstances unique to Oyster Creek, the Board concludes that, with the exceptions noted herein, the Company's auction process was generally otherwise consistent with the Auction Standards. The Board FINDS that, with the changes ordered herein, the Company has met its burden of demonstrating that the sale process provided for continued environmental stewardship through the transfer of ownership of the Facility, while limiting the environmental cost exposure for customers, and has mitigated the impact of the sale on the incumbent workforce of the divesting company, and will not adversely impact the reliability of the electric system. As such, the Board FINDS that the Company's sale process has substantially complied with the Auction Standards. In light of its finding, the Board HEREBY WAIVES the advertising requirements as set forth in N.J.A.C. 14:1-5.6(b), as the intent of the requirement has been fulfilled by the Company's compliance with the aforementioned Auction Standards.

In addition, the Board concludes that the record in this proceeding adequately demonstrates that the sale price of Oyster Creek reflects the full market value of the Facility at the time of the sale, and that the sale is in the best interest of the Company's customers, pursuant to N.J.S.A. 48:3-59(c). The Board therefore FINDS that the provisions of N.J.S.A. 48:3-59(c) have been met in their entirety. Therefore, subject to the modification discussed hereinabove, pursuant to N.J.S.A. 48:3-7, the sale of Oyster Creek by JCP&L to AmerGen for approximately $10 million, subject to certain adjustments at closing, is HEREBY APPROVED.

[4] The Company advised [] that, as of February 2003, the actual expenditure associated with the retained liability was $452,000.

The Company is also seeking approval of the PPA entered into by the Company and AmerGen, which provided that, from the closing[5] through March 31, 2003, JCP&L would purchase from AmerGen the total net electric output of Oyster Creek, as well as unforced capacity, as defined by the PJM RAA, at a fixed price of $33.66/mWh, subject to adjustment with respect to the actual date of closing as defined in the PPA, with seasonal adjustments for on-peak, off-peak and shoulder periods. The Advocate does not oppose the PPA, but suggests that the Company's customers should be protected in the event JCP&L must buy energy at market prices during periods of high demand due to the unavailability of Oyster Creek. The Board believes that the PPA provides an incentive to AmerGen to maintain full output at peak times, thereby reducing the risk of volatility in the energy market. The Board therefore HEREBY APPROVES the PPA, finding it to be in the public interest, in accordance with applicable law, and the rates specified therein and the cost resulting therefrom to be reasonable and prudently incurred by the Company throughout the full term of the PPA. The Board will permit the Company to flow through and/or receive full and timely recovery of the costs resulting therefrom as part of its Basic Generation Service.

JCP&L also seeks approval of the RSA under which JCP&L and AmerGen agreed to provide various services to each other both before and after the closing, with these services being performed on a "cost plus" basis. The Board FINDS the terms of the RSA to be reasonable and HEREBY APPROVES the RSA.

The Advocate argues that various tax benefits have accrued in connection with the operation of Oyster Creek and that any resulting tax benefits should flow through to the benefit of JCP&L's customers. The Advocate recommends that the Board order the Company to seek a ruling from the IRS on these tax issues. JCP&L argues that is has already agreed to seek an IRS tax ruling concerning ITC and EDIT matters associated with Oyster Creek and that the receipt of favorable tax rulings with respect to the tax liabilities associated with the decommissioning trust funds for the Oyster Creek sale is already a condition to closing.

The Board agrees that JCP&L should file for a letter ruling with the IRS. If favorable, the requested ruling would allow the ITC and EDIT benefits to continue to be flowed through to customers. Accordingly, the final determination of the net proceeds and stranded benefits (the post-closing true-up proposed by the Company on page 26 of the Petition) should await the outcome of this ruling. Thus, the Board HEREBY ORDERS the Company to promptly seek a private letter ruling from the IRS regarding these federal income tax benefits associated with the subject sale.[6] The Board further DIRECTS the Company to advise the Board upon receipt by the Company of a private letter ruling from the IRS regarding the treatment of the federal income tax benefits associated with the subject sale, and to submit a filing within five days of receipt of such a private letter ruling which shall include a final proposed determination of the net divestiture proceeds associated with the instant transaction. Accordingly, the Board's final determination of the net proceeds and stranded costs associated with Oyster Creek proposed by the Company shall await the outcome of this ruling.

[5] The closing date for the sale of the Oyster Creek to AmerGen was August 8, 2000.

[6] On July 22, 2002, the Company filed a request with the IRS for a private letter ruling on the federal income tax benefits associated with the sale of Oyster Creek and other divested generation assets.

The Company maintains that, as a condition to closing of the purchase by AmerGen of Oyster Creek, AmerGen must qualify as an exempt wholesale generator ("EWG")[7], which will exempt AmerGen from regulation under PUHCA. Under Section 32 of PUHCA, certain generators of electricity may apply to the FERC to qualify for EWG status. In order for Oyster Creek to be considered an eligible facility by FERC under Section 32 of PUHCA:

> (c) … every State commission having jurisdiction over any such rate or charge must make specific determination that allowing such facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law; [p]rovided, [t]hat in the case of such a rate or charge which is a rate or charge of an affiliate of a registered holding company:
>
> > (A) such determination with respect to the facility in question shall be required from every State Commission having jurisdiction over the retail rates and charges of the affiliates of such registered holding company….
> > [15 U.S.C. §79z-5a(c)]

Because GPU is a registered holding company under PUHCA and other states have jurisdiction over the retail rates and charges of the affiliates of JCP&L as of October 24, 1992 (the date of the enactment of Section 32 of PUHCA), each state commission having jurisdiction over the retail charges of the affiliates of GPU must make such determination with respect to all of the generating facilities being sold by GPU, regardless of the particular GPU affiliate owning such facilities[8]. Petitions will be filed with the FERC and the NRC by JCP&L seeking authorization for the sale of Oyster Creek insofar as such transaction is subject to the jurisdiction of each agency.

Having reviewed the record in this matter, it appears that the sale of Oyster Creek will not adversely affect either the availability or reliability of electric supply to JCP&L's customers, and that the reasonable divestiture of the Facility should enhance the availability of competitive energy supplies for JCP&L's customers within PJM. The Board notes that the instant sale was approved by the Pennsylvania Public Utility Commission ("PaPUC") on October 16, 1998, and that the PaPUC found that the sale of Oyster Creek will benefit consumers, is in the public interest and does not violate Pennsylvania state law.

As noted above, consistent with the above findings, and based on a review of the market power analysis provided by the Company, it does not appear that this transaction raises any significant generation or transmission market power issues within the State of New Jersey or PJM.

Therefore, for the reasons stated, the Board HEREBY DETERMINES that allowing Oyster Creek to be an eligible facility, pursuant to section 32 of the of PUHCA, will benefit New Jersey consumers, is in the public interest and does not violate New Jersey law. The Board's determination is based on the facts of this transaction as they have been presented and shall

[7] Section 32(a) of PUHCA, 15 U.S.C. §79z-5a(a), defines an EWG as "any person determined by the [FERC] to be engaged directly, or indirectly through one or more affiliates…, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale…."

[8] As part of Met-Ed's and Penelec's settlement agreement with the PaPUC and other parties to their restructuring proceedings, the PaPUC made a specific eligible facility determination with regard to each of GPU's separate generation assets, including Oyster Creek. In addition, since Penelec serves approximately 13,700 customers in New York, the New York Public Service Commission must make similar findings for all of the plants.

not be precedential for any such future requests, by this or any other company, for similar determinations for other facilities.

Finally, the Board shall reserve judgment with regards to making a final determination with respect to the net divestiture proceeds, including the Company's treatment of the federal income tax benefits associated with the divested assets, and the Board HEREBY DIRECTS the Company to file with the Board, within 15 days of the closing date of the asset sale, proof of closing and the net transaction costs[9]; The Board further DIRECTS the Company to advise the Board, in writing, upon receipt by the Company of a private letter ruling from the IRS regarding the treatment of the federal income tax benefits associated with the subject sale, and to submit a filing with the Board within 30 days of receipt of such private letter ruling which shall include a final proposed determination of the net divestiture proceeds associated with this transaction. Accordingly, the Board's determination of the net proceeds will await the outcome of the IRS private letter ruling.

DATED: November 21, 2003

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

ATTEST: (SIGNED)

KRISTI IZZO
SECRETARY

[9] On August 23, 2000, the Company filed with the Board, the asset sale proof of closing and the net transaction cost.

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